IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2147 of 2004
To
FIRST APPEAL No. 2249 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
PATEL BHARATKUMAR MAGANLAL & 2 - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned Government Pleader for appellants in First Appeal Nos.2147 to 2198 of 2004.

Ms.Bhavika Kotecha,learned Assistant Government Pleader for appellants in First Appeal Nos.2199 to 2249 of 2004.
Mr.A.J.Shastri for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 02/07/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated August 13,2003, rendered by the learned Joint District Judge, Fast Track Court (II), Mehsana in Land Acquisition Reference Nos. 248 to 350 of 1997, by which the claimants have been awarded additional amount of compensation at the rate of Rs.225/- per sq.mt. for irrigated lands and Rs.223/- per sq.mt. for non-irrigated lands, in addition to compensation offered to them at the rate of Rs.8/- per sq.mt. for irrigated lands and Rs.6/- per sq.mt. for non-irrigated lands by the Special Land Acquisition Officer vide award dated September 20,1995.

2. The Executive Engineer, Dharoi Canal Scheme No.3, Visnagar proposed to the State Government to acquire several pieces of agricultural lands of

village Unjha, Taluka Unjha, District Mehsana for the public purpose of construction of (Sipu) Dharoi Canal Project. On perusal of the same, the State Government was satisfied that the lands mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on March 15,1992. The owners of the lands were served with notices as required by Section 4 of the Act and an inquiry was conducted. On conclusion of inquiry, a report, as contemplated by Section 5A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Unjha, specified in the Notification published under Section 4 of the Act, were needed for the public purpose of construction of (Sipu) Dharoi Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on December 21,1992. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per

sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.8/- per sq.mt. for irrigated lands and Rs.6/- per sq.mt. for non-irrigated lands by his award dated September 20,1995. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court,Mehsana, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Gopalbhai Prabhudas Patel was examined at Exh.18. After giving particulars of the lands acquired, the witness mentioned before the court that all the lands were adjoining to each other and bearing good potentiality. The witness stated that village Unjha was considered to be a Taluka place and was hardly at a distance of 5 Kms. from Sidhpur. The witness further informed the Court that Ahmedabad-Delhi

Highway No.8 was passing through Unjha village. The witness further stated that Unjha is a Railway Junction and well connected with road and rail. After mentioning that the population of the village was 1 lac, it was mentioned that it was one of the biggest commercial markets of Asia. The witness also informed the Court that all kinds of educational institutions, G.I.D.C. Industrial Units, Ginning and Cleaning Factories etc. were situated at village Unjha. The witness pointed out to the court that earlier also lands were acquired from his village on two occasions and, therefore, on the basis of awards rendered by the Reference Court in those two cases, the claimants were entitled to enhanced compensation. The witness produced those two awards of the Reference Court at Exh.11 and Exh.12. The witness also produced certain sale deeds relating to the lands of village Unjha at Exhs.13 to 15 for consideration of the Court. In order to substantiate his claim that Unjha town was well developed town, he produced necessary map at Exh.20.

Though this witness was cross-examined at length by the learned counsel for the acquiring authorities, nothing substantial could be elicited

nor the assertion made by the witness that lands of Unjha town which were acquired earlier were similar in all respects to the lands acquired in the instant cases, could be demonstrated to be untrue.

4. On behalf of the acquiring authorities, witness Dudalal Nathalal Parmar was examined at Exh.22. His evidence indicates that at the time when his testimony was recorded, he was serving as Deputy Mamlatdar at Palanpur. The witness mentioned that after receipt of notices under Section 9 of the Act, the claimants had not produced any evidence before the Special Land Acquisition Officer in support of their claim that they were entitled to compensation at the rate of Rs.200/- per sq.mt. The witness also maintained that the lands acquired were of average quality.

However, in cross-examination by the learned counsel for the claimants, the witness had to admit that he had not seen the lands acquired nor was associated in any manner with the process which was initiated for acquisition of the lands in the instant case. The witness admitted before the Court that he was deposing before the Court on the basis of

official record made available to him. The witness further stated in his cross-examination that Market Yard having maximum turn over is situated in village Unjha and that cumin seeds, spogel seeds, fennel seeds etc. were being exported from Unjha. He had also to admit that village Unjha was fully developed and that earlier also lands were acquired from said village regarding which awards were made by the Reference Court.

5. On appreciation of evidence produced by the claimants, the Reference Court was of the opinion that sale deeds produced by the claimants did not furnish good guidance for the purpose of determining market value of the lands acquired in the instant cases as they were relating to lands of small size and were not in the vicinity of the lands acquired. The Reference Court felt that the two previous awards of the Reference Court were relevant for the purpose of determining market value of the lands acquired in the instant cases. Thereafter, the Reference Court took up those previous awards for consideration and ultimately held that Exh.11 was the only piece of evidence relevant for the purpose of determining market vale of the lands acquired in the instant

cases. On scrutiny of Exh.11, which is previous award of the Reference Court relating to the lands of this very village, the Reference Court found that in those cases, the claimants were awarded compensation at the rate of Rs.105/- per sq.mt. and that Notification for acquiring lands was published in the Official Gazette on June 11,1981 whereas in the instant case notification under Section 4(1) of the Act was published in the Official gazette on March 15,1992. The Reference Court, therefore, concluded that the claimants were also entitled to the benefit of rise in price of lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded in all compensation to the claimants at the rate of Rs.231/- per sq.mt. for their acquired lands by the impugned common award, giving rise to the instant appeals.

6. This Court has heard Mr.S.S.Shah, learned Government Pleader as well as Ms.Bhavika Kotecha, learned Assistant Government Pleader for the appellants and Mr.A.J.Shastri, learned counsel for the claimant/claimants in each appeal at length and in great detail. This court has also considered the R & P received from the Reference Court.

7. It is true that the claimants could not make good their assertion that each claimant was earning substantial income from the sale of agricultural produces. However, the said fact pales into insignificance inasmuch as enhanced compensation was never claimed on yield basis. Though the claimants had claimed enhanced compensation on the basis of comparable sale instances, the same were not found to be relevant by the Reference Court. This Court has also gone through the sale deeds produced by the claimants at Exh.13 to Exh.15 and finds that they relate to lands, which are small in size in comparison to large tract of lands acquired in the instant cases. Further no reliable evidence could be adduced by the claimants that the lands, which were subject matter of those sale deeds, are situated in the vicinity of the lands acquired in the instant cases or that they were similar in all respects to the lands acquired in these cases. Therefore, this court is of the opinion that the Reference Court was justified in not placing reliance on those sale deeds while determining the market value of the lands acquired in the instant cases.

8. This left the Reference Court with two previous awards relating to the lands of this very village which are relied upon by claimants in support of their claim for enhanced compensation. Exh.11 indicates that pursuant to publication of Notification issued under Section 4 of the Act in the Official Gazette on June 11, 1981, the lands of village Unjha were acquired for public purpose of Vadnagar-Ladol Road. Therein the Land Acquisition officer had made award under Section 11 of the Act on March 25, 1983. Feeling aggrieved, references were sought by the claimants. Accordingly references were made to the District Court, Mehsana where they were numbered as Land Acquisition Reference Nos.234 of 1990 to Land Acquisition Reference No.251 of 1990. On appreciation of evidence adduced by the parties, the Reference Court by common judgment and award dated February 23,1995 awarded compensation to the claimants at the rate of Rs.105/- per sq.mt. A perusal of Exh.12 indicates that pursuant to notification under Section 4 of the Act which was published in the Official Gazette on June 11, 1981 the lands of village Unjha were acquired for the public purpose of Unjha-Vadnagar-Ladol Raod. In those cases, award was made by the Special Land Acquisition

Officer on March 25, 1983 as contemplated by Section 11 of the Act. Feeling aggrieved,the claimants had sought references. Accordingly references were made to the District Court where they were numbered as Land Acquisition Reference No.19 to 32 of 1984. In those cases, on behalf of th claimants, following witnesses were examined:

(i) Kantilal Chhaganbhai Patel at Exh.16,
(ii) Keshavlal Joitaram Patel at Exh.32,
(iii) Ramabhai Ganeshbhai Rabari at Exh.34,
(iv) Hargovanbhai Motibhai at Exh.43,
(v) Narendrabhai Champakbhai Shah at Exh.45,
(vi) Kantibhai Joitabhai Patel at Exh.47,
(vii) Shivabhai Hirabhai at Exh.51 and
(viii) Chandubhai Joitaram at Exh.53.

9. No witness was examined on behalf of the acquiring authorities.

10. On the basis of evidence adduced by the claimants, the Reference Court by its judgment and award dated March 21, 1992 awarded additional compensation to the claimants as mentioned in the Schedule appended to the award.

11. In these cases, the Reference Court has given cogent and convincing reasons for not relying upon Exh.12 while determining market value of the lands

acquired in the instant cases. Those reasons are to be found in paragraph 17C of the judgment with which we fully concurs.

12. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the same village. The assertion made by the witnesses examined on behalf of the claimants that the lands, which were subject matter of previous award produced at Exh.11, were similar in all respects to the lands acquired in the instant case could not be challenged by the acquiring authorities at all. Thus, relevancy of previous award produced at Exh.11 stands satisfactorily established. It is relevant to notice that it is not the case of the appellants that previous award of the Reference Court relating to the lands of this very village produced at Exh.11 has not attained finality and that it was either modified or set aside by the higher forum. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on Exh.11 while determining

the market value of the lands acquired in the instant cases. Further Notification under Section 4(1) of the Act was published in the official gazette on June 11,1981 in those cases, whereas in the instant cases notification under Section 4(1) of the Act was published in the Official gazette on March 15,1992 and, therefore, in view of gap of time in publication of two notifications, the Reference Court was justified in granting benefit of rise in price of lands to the claimants at the rate of 10% per annum, more particularly when it is a well known fact, of which judicial notice can be taken, that prices of lands go on increasing day by day and never remain static. The calculation of amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of this very village produced at Exh.11 is not in dispute before this Court in the instant appeals. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned counsels for the appellants could not persuade this Court to take a view different than the one taken by

the Reference Court on appreciation of evidence adduced before it. Thus, the appeals, which lack merits, deserve dismissal.

13. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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